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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,294	01/22/2004	Anton Ruettiger	4106-0134P	3159
2292	7590	11/17/2005	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			VERBITSKY, GAIL KAPLAN	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/761,294	Applicant(s) RUETTIGER, ANTON	
	Examiner Gail Verbitsky	Art Unit 2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08/30/2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 4-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 4-17 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>07/15/04, 01/22/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's election with traverse of Invention I, claims 1-3, is hereby acknowledged. In light of arguments presented by applicant in paper (August 30, 2005), the Restriction/Election requirements mailed on March 09, 2005 has been replaced with the present Office Action.

Election/Restrictions

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-3, drawn to method for determining an interior temperature, classified in class 374, subclass 133.
 - II. Claims 4-16, drawn to temperature sensor to determine interior temperature of a motor vehicle, classified in class 374, subclass 141.
 - III. Claims 17, drawn to method for determining and adjusting temperature, classified in class 374, subclass 129.

The inventions are distinct, each from the other because of the following reasons:

3. Inventions II and I are related as process (method) and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the method of Invention I does not necessarily require the device of Invention II, in that the Invention I requires to measure the presence or absence or air flow, and does not require that the temperature sensor and an additional

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sensor are attached to a foil, as required by Invention II. Invention I requires that the temperature sensor provides its response in the forms of impulses (claim 2). Invention II requires a control element, an additional sensor for determining a self-heating of the control element, the particular housing and that the interior temperature to be determined is an interior temperature of a motor vehicle, not required by Invention I.

4. Inventions III and II are related as process (method) and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the method of Invention III does not necessarily require the device of Invention II, in that the Invention III does not require an additional sensor for measuring sun radiation, required by Invention II, and the Invention III requires determining presence or absence of air flow and adjusting a control of heating and air conditioning system. Invention II requires a particular housing that has an IR permeable area around the sensor, not required by Invention III. Invention II requires self-heating of a control element, not required by Invention III. Invention III requires measuring and storing a control value, not required by Invention II.

5. Inventions III and I are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are directed to different methods: Invention I is directed to method for determining an interior temperature, and does not require

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providing a control element, while Invention III is directed to method for determining and adjusting temperature by adjusting a control of heating and air-conditioning system of a motor vehicle. Invention I is not concerned with an interior temperature of a motor vehicle. Invention III and does not require recording a sun radiation, required by Invention I.

6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Claim Objections

7. Claims 1-3 are objected to because of the following informalities:

Claims 1, 2: it is not clear if “air circulation” and “air flow” are being used to describe the same variable. Perhaps applicant should replace “air circulation” with –air flow— or to replace “air circulation” in lines 4 and 8 and “air flow” in line 12 of claim 1 and lines 1 and 3 of claim 2 with –air circulation or air flow—, in order to clearly describe the invention and maintain consistency through the claims. Is this a proper interpretation of the invention?

Claim 1: A) perhaps applicant should insert –temperature—before “sensor” in line 10 in order to distinguish between the two sensors described in the claim.

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B) Perhaps applicant should add –of the temperature sensor—after “reaction” in line 12, in order to clearly describe the invention.

C) It is not clear what applicant means by “a first adaptive measurement” in line 7,

D) It is not clear what applicant means by “the reaction” in lines 8 and 12. Does applicant mean “the response” or “the signal”? Is this a proper interpretation of the invention?

Claim 3: A) perhaps applicant should replace “comprising a sensor” in lines 1-2 with –wherein the sensor is—;

B) Perhaps applicant should replace “an at least one sensor” in lines 2-3 with –the at least one sensor is—,

C) Perhaps applicant should replace “a heat element” in line 4 with –the heat element is—, in order to avoid redundancy of claim 3 and claim 1.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In this case, the claim language is confusing because,

A) It is not clear if “the air circulation” and “the air flow” refer to the same variable,

B) It is not clear how the "step response" of a heating element further limits the claim.

Does the heating element heat the interior and control the temperature in response to the temperature signal (reaction)?

C) Also, the claim language is confusing because, the preamble of the claims is directed to "determining an interior temperature", however, the claims are lacking of the actual step of determining the interior temperature.

Claims 2-3 are rejected by virtue of their dependency on claim 1.

Allowable Subject Matter

10. Claims 1-3 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gail Verbitsky whose telephone number is 571/ 272-2253. The examiner can normally be reached on 7:30 to 4:00 ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on 571/ 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GKV

Gail Verbitsky

Primary Patent Examiner, TC 2800



November 10, 2005